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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,916	05/11/2001	David G. Quinn	5935/57	7605

7590

03/26/2004

Brinks Hofer Gilson & Lione
P.O. Box 10395
Chicago, IL 60610

EXAMINER

DESANTO, MATTHEW F

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 03/26/2004

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/853,916

Applicant(s)

QUINN, DAVID G.

Examiner

Matthew F DeSanto

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 8-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-5, 8-17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Cruz et al. Cruz et al. discloses a catheter with a bolus, wherein the bolus has a nose section, passage section, and a connector section as well as bracketing support section, and a stiffening arch section. (Figures 1-13 and entire reference).

2. Claims 11, 13, 16, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Andersen (USPN 6511474).

Andersen disclosed a catheter with a tube section, a bolus section including a connector section, nose section, and a passage section and wherein said nose section has an axis inclined from said longitudinal axis so that said nose section has an external surface portion which is substantially tangent to an imaginary cylinder containing the trailing edge of said port. (See Figures 2, 3 and 4 and entire reference)

3. Claims 11, 12 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by W. Rusch (USPN 2116083).

W. Rusch discloses a catheter with a tube section, a bolus section including a connector section, nose section, and a passage section and wherein said nose section has an axis inclined from said longitudinal axis so that said nose section has an external surface portion which is substantially tangent to an imaginary cylinder containing the trailing edge of said port. (See Figures 1, 3 and entire reference)

4. Claims 1-5, and 8-15 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Quinn (USPN 5599322).

Quinn discloses a catheter with a tube section, a bolus section including a connector section, nose section, and a passage section and wherein said nose section has an axis inclined from said longitudinal axis so that said nose section has an external surface portion which is substantially tangent to an imaginary cylinder containing the trailing edge of said port. (See Figures 2-6, 14-19 and entire reference)

Double Patenting

5. Claims 1-5, and 8-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over U.S. Patent No. 6461321 with regards to claims 5, 16 and 30. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims are drawn to a catheter tube having a bolus, wherein the bolus comprises a connector section, a nose section and a passageway section, wherein a port is located in the passageway section.

Response to Arguments

6. Upon further consideration of the claimed invention the examiner withdraws the 102 Rejection with regards to Mahurkar (USPN 5221256).


7. The examiner does not see the difference between the prior art and the claimed invention with regards to the axis of the nose section.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 1-703-305-3292. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 1-703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Matthew DeSanto
Art Unit 3763
March 22, 2004


BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700